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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/822,540	04/12/2004	Aron D. Rosenberg	04712/050002	1791
21559	7590	10/15/2010		
CLARK & ELBING LLP 101 FEDERAL STREET BOSTON, MA 02110			EXAMINER AZPURU, CARLOS A	
			ART UNIT	PAPER NUMBER
			1617	
			NOTIFICATION DATE	DELIVERY MODE
			10/15/2010	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

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OCT 14 2010

CLARK & ELBING LLP
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BOSTON MA 02110

In re Application of: :
Rosenberg et al. :
Serial No.: 10/822,540 : PETITION DECISION
Filed: April 12, 2004 :
Attorney Docket No.: 04712/050002 :

This is in response to the petition under 37 CFR § 1.181, filed June 21, 2010, requesting that the finality of the Office action of April 19, 2010 be withdrawn.

BACKGROUND

On September 9, 2009, the examiner mailed a non-final Office action setting a three month statutory limit for reply. At the time of this non-final Office action, claims 1, 3, 4, 7-38, 44-80, 82 and 84-94 were pending. The examiner rejected claims 1, 3, 4, 7-37 and 84-94 and withdrew claims 38, 40, 41, 44-80 and 82 from consideration. Claims 1, 3, 4, 7-37 and 84-94 were provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-34, 37-41 of copending Application No. 10/298,112.

In reply to the non-final Office action of September 9, 2009, applicants filed a response on February 9, 2010. The response submitted by applicants included remarks and arguments traversing the rejections made in the non-final Office action.

On April 19, 2010, the examiner mailed a final Office action setting a three month statutory limit for reply. At the time of this final Office action, 1, 3, 4, 7-38, 44-80, 82 and 84-106 were pending. The examiner rejected claims 1, 3, 4, 7-37 and 84-106 and withdrew claims 38, 40, 41, 44-80 and 82 from consideration. Claims 1, 3, 4, 7-37 and 84-106 were rejected under 35 USC 102 (b) as being anticipated by US 2003/049329 A1 (Lee Dosuk et al.).

In response thereto, applicants filed a petition on June 21, 2010, requesting that the finality of the Office action of April 19, 2010 be withdrawn.

DISCUSSION

The petition and the file history have been carefully considered.

In the petition filed by applicants on June 21, 2010, applicants request withdrawal of the final Office action mailed by the examiner on April 19, 2010. Specifically, applicants argue that "The Office's general statements about Lee et al. are insufficient to provide Applicants with notice as to how Lee et al. meets each and every limitation of claims 1, 3, 4, 7-37, and 84-106, which is required to establish the rejection of a claim for anticipation. Accordingly, Applicants can only surmise as to how the Office is applying the teachings of Lee et al. to claims 1, 3, 4, 7-37, and 84-106. Given the absence of any analysis explaining how Lee et al. anticipates claims 1, 3, 4, 7-37, and 84-106, Applicants lack a sufficient factual basis upon which to rebut the Office's novelty rejection of claims 1, 3, 4, 7-37, and 84-106 in view of Lee et al. For this reason, Applicants respectfully request withdrawal of finality of the present Office Action to allow Applicants a fair opportunity to respond to the new ground of rejection."

Applicants' arguments are well-taken and found persuasive that the final Office action lacks an analysis explaining how Lee et al. anticipates the claims. Accordingly, the final Office action issued April 19, 2010 is found premature and thus in error. Consequently, the finality of the Office action will be withdrawn in favor of applicants.

DECISION

The petition is **GRANTED**.

The Office action mailed April 19, 2010 is hereby vacated to the extent that it was made "final" and the Office action is now considered to be a non-final Office action. The after final amendment of June 21, 2010 will also be entered. This application will be returned to the examiner for further action consistent with this decision and to act on the amendment of June 21, 2010.

Should there be any questions about this decision please contact Marianne C. Seidel, by letter addressed to Director, TC 1600, at the address listed above, or by telephone at 571-272-0584 or by facsimile sent to the general Office facsimile number, 571-273-8300.



Remy Yucel
Director, Technology Center 1600